IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

OP.No. 17607 of 2000(U)

PETITIONER:

G.O.CHATHU, S/O. ONAKKAN, AGED 52 YEARS, EX-DRIVER, K.S.R.T.C., GURUKKILAVIDA HOUSE, MUMUNDA P.O., VADAKARA, KOZHIKODE. (DIED) LR'S IMPLEADED.

P2. SMT.O.M.JANAKI, S/O. LATE G.O.CHATHU, AGED 56 YEARS, RESIDING AT PULIKOOLTHAZHA-KUNIYIL HOUSE, MEMUNDU P.O., VADAKARA KOZHIKODE (LEGAL REPRESENTATIVE OF THE PETITIONER).

BY ADV. SRI.N.UNNIKRISHNAN

RESPONDENTS:
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1. THE KERALA STATE ROAD TRANSPORT CORPORATION, TRANSPORT BHAVAN, FORT, THIRUVANANTHAPURAM REP.BY ITS MANAGING DIRECTOR.

2. THE CHIEF VIGILANCE AND DISCIPLINARY OFFICER, (NOW INDUSTRIAL RELATIONS MANAGER), K.S.R.T.C , TRANSPORT BHAVAN, FORT, THIRUVANANTHAPURAM.

3. THE KERALA STATE ROAD TRANSPORT CORPORATION APPELLATE TRIBUNAL, TRANSPORT BHAVAN, FORT, THIRUVANANTHAPURAM.

BY ADV. SRI.JOSE THETTAYIL, SC, KSRTC
SRI.P.PARAMESWARAN NAIR, SC, KSRTC
SRI.G.PRABHAKARAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 12/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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OP. NO.17607/2000

ORDER ON CMP.NOS.29007/2000 , 35606/2000
IN OP. NO.17607/2000

DISMISSED

12.09.2007 SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE WRITTEN STATEMENT DT. 7/90 SUBMITTED BY THE PETITIONER BEFORE THE INDUSTRIAL RELATIONS MANAGER.

EXT.P2:- COPY OF THE ORDER NO.VLE1-122020/83 DT. 7.8.91 ISSUED BY THE 2ND RESPONDENT.

EXT.P3:- COPY OF THE APPEAL DT. 5.9.91 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

EXT.P4:- COPY OF THE ORDER NO.D.DIS. 54824/1PL. DT. 5.2.92 PASSED BY THE APPELLATE AUTHORITY, 1ST RESPONDENT.

EXT.P5:- COPY OF THE I.P.REFERRAL CARD NO.44003 ISSUED BY MEDICAL COLLEGE HOSPITAL, CALICUT.

EXT.P6:- COPY OF THE PRESCRIPTION FOR THE PERIOD 21.9.95 AND 22.8.97 ISSUED BY DR.VENUGOPAL, ASSOCIATE PROFESSOR, CARDIOLOGY, MEDICAL COLLEGE HOSPITAL, CALICUT.

EXT.P7:- COPY OF THE REPRESENTATION DT. 29.9.93 SUBMITTED BY THE PETITIONER BEFORE THE HONOURABLE MINISTER FOR TRANSPORT.

EXT.P8:- COPY OF THE REVISION PETITION DT. 28.3.98 SUBMITTED BY THE PETITIONER BEFORE THE K.S.R.T.C APPELLATE TRIBUNAL.

EXT.P9:- COPY OF THE AFFIDAVIT AND PETITION DT. 28.3.98 -DO- -DO-

EXT.P9(a):- COPY OF THE ORDER DT. 30.10.99 IN RP. NO.61/98 PASSED BY THE 3RD RESPONDENT.

EXT.P10:- COPY OF THE ORDER NO.APL/6272/92 DT. 22.9.92 IN THE CASE OF SHRI P.T.CHACKO, DRIVER, K.S.R.T.C , KOTTAYAM.

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EXT.P11:- COPY OF THE DEATH CERTIFICATE DT. 6.12.02 ISSUED BY THE REGISTRAR OF BIRTH AND DEATHS CORPORATION, CALICUT.

EXT.P12:- COPY OF THE JUDGMENT DT. 30.11.85 IN CC. 54/84 RENDERED BY ADDL. CHIEF JUDICIAL MAGISTRATE COURT, KOZHIKODE.

EXT.P13:- COPY OF THE JUDGMENT DT. 4.10.89 IN CRL. APPEAL NO.146/85 OF THE COURT OF SESSIONS KOZHIKODE.

EXT.P14:- COPY OF THE CRL.RP. NO.851/89 JUDGMENT DT. 30.8.90 RENDERED BY THIS HONOURABLE COURT.

EXT.P15:- COPY OF THE ORDER NO.D.DIS 025783/APLI, DT. 13.10.98.

/TRUE COPY/

P.A. TO JUDGE

tss

THOTTATHIL B.RADHAKRISHNAN, J.

O.P.No.17607 OF 2000

Dated this the 12th day of September, 2007

JUDGMENT

The deceased writ petitioner was a driver employed in K.S.R.T.C. He was convicted for an offence punishable under Section 304 A of the Indian Penal code. That incident and conviction led to his dismissal. The Chairman of the K.S.R.T.C., as appellate authority, issued Ext.P4, refusing to interfere with the punishment of dismissal. The reason stated in Ext.P4 is that in spite of opportunity given, the petitioner did not produce any materials to show that there was litigating circumstances in his case.

2. At the same time, Ext.P10, issued in the case of another driver, shows that the Chairman cum Managing Director has taken the view that offences punishable under Section 304 A do not amount to culpable homicide and conviction under Section 304 A need not be a situation where the driver should be removed from service. Ext.P10 decision and the impugned

Ext.P4 are rendered within a gap of seven months. Ext.P15 relating to another driver would show that on account of conviction under Section 304 A, the incumbent in that case was also given a lesser punishment.

3. It is not the law that the petitioner and the beneficiaries of Exts.P10 and P15 are to be treated as similarly situated or that he will be entitled to demonstrate a case of hostile discrimination merely because he has been handed down the punishment of removal from service while two other drivers involved in offences punishable under Section 304 A were left off with the punishment of barring of certain increments. But, when the yardstick applied to come to the conclusion that is contained in Ext.P10 is not on the basis of peculiar facts and circumstances of the case being dealt with under that order, but on the mere fact that the conviction and sentence was only under Section 304 A and the Chairman cum Managing Director having taken the view, rightly, that the offences punishable under Section 304 A do not amount to culpable homicide, the question that the

Managing Director had to further consider was as to why the petitioner could not have been extended the very same view in law, particularly when the case of the petitioner was also not decided with reference to the facts constituting the crime that was alleged and proved against him. Equally so is the situation referable to Ext.P15.

4. With the passage of time, the writ petitioner is no more and the attempt of the impleaded legal representative, his widow, is only to reach at the probable retiral benefits that may be due, by espousing the cause, contending that her husband has not committed culpable homicide to be deprived of the fruits of his labour totally.

5. For the foregoing reasons, Ext.P4 is set aside and the appellate authority, the Chairman cum Managing Director, will take up the appeal of the deceased writ petitioner and reconsider the same in the light of what is stated above and having regard to the materials on record, including the decisions taken in

Exts.P10 and P15. A final decision shall be rendered and communicated to the widow of the petitioner within an outer limit of three months from the date of receipt of a copy of this judgment. If the decision of the Managing Director is, in favour of the writ petitioner and his widow, any monetary benefits arising out of such decision will be made available to the legal representatives of the writ petitioner without delay.

The writ petition is disposed of with the above directions.

Sd/-

THOTTATHIL B.RADHAKRISHNAN,
Judge

kkb.

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THOTTATHIL B. RADHAKRISHNAN, J

O.P.NO.17607 OF 2000

JUDGMENT

12th SEPTEMBER, 2007.

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